

**CITY OF
WAKEFIELD METROPOLITAN DISTRICT
COUNCIL**

DEVELOPMENT DEPARTMENT

ENVIRONMENTAL HEALTH SERVICES

ENFORCEMENT POLICY

November 2001

ENVIRONMENTAL HEALTH SERVICE ENFORCEMENT POLICY

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1 **ENFORCEMENT POLICY STATEMENT**

This policy sets out the general principles which inform the enforcement function throughout Environmental Health Services. Each service team within the service has a more detailed policy which applies these principles to that function. These detailed policies are set out in appendices A - C.

2 **INTRODUCTION**

Environmental Health Services enforce a wide variety of legislation using powers that enable inspectors, amongst other things, to issue verbal advice, send letters, serve formal notices, issue formal cautions or prosecute in the courts.

Inspectors frequently find contraventions of the law but have to choose the most appropriate method of achieving compliance with the law from the range of possible actions available.

Environmental Health Services will seek to carry out its enforcement functions efficiently and effectively and in a way which is open, clear and helpful to business.

The enforcement action chosen by the inspector must be informed by this policy, that promotes consistency, proportionality, transparency and fairness.

Anyone who may be affected by our enforcement actions should have access to this policy in order that they know what the consequences of breaking the laws enforced by Environmental Health Services may be.

3 **GENERAL PRINCIPLES**

- 3.1 Environmental Health Services must seek to secure compliance with the laws they enforce.
- 3.2 When inspectors find a contravention of the law they will warn or advise you (orally or in writing) of the steps needed to put things right

UNLESS

the use of formal enforcement powers is the most appropriate way of dealing with the matter.

The decision to use formal enforcement action, such as the service of notices, will be dependant upon the degree of risk created by the breach, the seriousness of the breach and the general record and approach of the offender.

- 3.3 Prosecution will be considered when,
 - a) it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law OR
 - b) through the conviction of offenders, others may be deterred from similar failures OR
 - c) there is judged to have been potential for considerable harm arising from the breach OR
 - d) the gravity of the offence, taken together with the general record and approach of the offender warrants it.

All communications with businesses will be clear and in plain English and will distinguish between advice and legal requirements.

Environmental Health Services will endeavour to discuss fully with duty holders any compliance failures or difficulties and will give full consideration to their views before exercising any formal enforcement powers against them.

If there is shared enforcement responsibility with another agency the decision as to which organisation takes the lead will be determined on the basis of the circumstances of the particular case following consultation.

Prosecutions will only proceed to court if the criteria set out in "The Code For Crown Prosecutors" (published by the Crown Prosecution Service) are met.

Inspectors will have due regard to all relevant codes under the Police and Criminal Evidence Act 1984 during their investigations.

Inspectors will have due regard for the requirements of the Criminal Procedures and Investigations Act 1996 and the Human Rights Act 1998 during the preparation and submission of evidence for prosecution.

The choice of enforcement action will not be influenced by the gender, ethnic origin or sexual orientation of the offender.

The enforcement function within Environmental Health Services will be carried out in accordance with the "Enforcement Concordat" produced by the Better Regulation Unit.

Environmental Health Services will, so far as is possible for an enforcing authority, endeavour to foster a good working relationship with duty holders and stakeholders.

4 **INTERPRETATION**

Consistency does not mean uniformity of approach – it means taking a similar approach in similar circumstances to achieve similar ends after considering the general record and approach of the offender.

Proportionality means relating the choice of enforcement action to the degree of risk and the seriousness of the breach.

Fairness means that the criteria for choosing enforcement action are transparent, action is focused on those who hold duties under the law and are best placed to comply with it, and personal circumstances of the offender (such as gender, ethnic origin, sexual orientation) do not influence the choice of enforcement action.

Transparency means helping those who hold duties under the law to understand what is expected of them and what they should expect from the enforcing authority. It also means making clear not only what has to be done to comply with the law but also what is recommended is done as good practice.

Any departure from this policy will be justified to and endorsed by a Principal Environmental Health Officer or Manager and the reasons for any departure will be fully documented and a copy kept on the premises file.

This policy has been approved by Council members.

5 **REFERENCES**

The Code for Crown Prosecutors. Crown Prosecution Service, June 1994.
Crown Prosecution Service, 50 Ludgate Hill, London, EC4M 7EX. 0171 273 8018.

The Enforcement Concordat. Better Regulation Unit, March 1998.
*Better Regulation Unit, Cabinet Office, Horse Guards Parade, London, SW1P 3AL.
0171 270 6928.*

APPENDIX A

ENVIRONMENTAL PROTECTION

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- 1 Introduction
- 2 Scope of Enforcement Function
- 3 Enforcement Options
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 - 5.3 Circumstances of the Offender
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 - 7.2 Presumptions as to Local Authority Intervention.

1 **INTRODUCTION**

The Environmental Protection Team provides a wide ranging service for the people and businesses within the district of Wakefield MDC. Its core role is to provide the regulatory function of the Local Authority on matters relating to public health and the environment which the Authority has either a mandatory or discretionary duty to provide by law. The types of enforcement action which are available to the Local Authority, and its authorised officers, are determined by the legislation from which regulatory duty originates. However, it is recognised that, as well as formal enforcement action, informal action can be used if the circumstances are appropriate to achieve the same end result.

The aim of this section of the Enforcement Policy is to inform those who take enforcement action and those who are affected by such action, of the circumstances on which enforcement decisions are to be based in relation to the Environmental Protection Service.

2 **SCOPE OF ENFORCEMENT FUNCTION**

The Environmental Protection Team's enforcement function is varied and extensive and is primarily aimed at protecting the environment and public health, and ensuring that people are not subjected to nuisance activity, so far as the law allows. This includes matters relating to air pollution, noise, drainage, pest control, dog fouling, accumulations and deposits of refuse, filthy and verminous premises, some aspects relating to the safety of drinking water and dealing with stray dogs, dangerous animals and animal health. In addition, the team is also responsible for arranging for the removal of unauthorised encampments on Council land and the licensing of caravan sites and certain types of premises which have implications for animal welfare.

In addition to their enforcement role the Environmental Protection Team undertakes extensive environmental monitoring, particularly relating to air quality, and also fulfils an important preventative role by providing information, advice and guidance to other council departments, external agencies and the community on matters which have a bearing on public health and the local environment.

3 **ENFORCEMENT OPTIONS**

The term enforcement is considered here in its widest sense and can range from offering verbal advice in relation to the requirements of the law to instituting legal proceedings. The type of enforcement can be categorised into either informal or formal action.

Informal action includes; verbal or written advice and verbal or written notification, confirmation or warning of a breach or potential breach of the law. Failing to act following an informal action taken by the Environmental Protection Team does not in itself result in any legal consequence, other than the potential for formal action to follow, although it may be indicative of the attitude which is being taken by the recipient which may influence further enforcement decisions.

Formal action carries with it legal consequences and includes; serving a legal notice including fixed penalty notices, revoking or varying a licence, prosecution including formal cautions, or seeking a Court Order or Injunction. The type of formal action which may be taken is determined by the legislation which provides for the function which is being exercised.

The consequences which may arise for failing to comply with formal action depend on the type of action taken, and include fines or imprisonment or other action of the Court dependant on the powers which are available under the Court's jurisdiction, and action taken by the Local Authority to seize equipment, undertake remedial works in default, for which the costs incurred may be recovered, or initiate further legal proceedings, such as prosecution.

4 **PRINCIPLES OF ENFORCEMENT**

Enforcement action will be undertaken in a firm but fair manner and shall be carried out in accordance with the principles of consistency, proportionality, fairness and transparency which are outlined in this Policy and the principles of good enforcement which are provided by the *Enforcement Concordat*.

In meeting these requirements, those who are regulated by the Environmental Protection Team can expect the following:

- A contact name, office address and telephone number of the officer who is taking, or proposing to take enforcement action.
- All communications to be in plain and simple language explaining clearly what is being required.
- An opportunity to discuss what is required to comply with the law on an informal basis, unless for reasons of urgency, gravity of offence or statutory obligation this is not feasible or is inappropriate.
- Where immediate enforcement action is considered necessary, an explanation why such action is required, unless this is not practically possible.
- Any verbal enforcement action to be confirmed in writing at the earliest opportunity

- A clear distinction between those matters which are advisory or informative and those which are legal requirements to be given.
- If the action is based on a legal requirement, the law from which the requirement stems to be specified.
- A clear explanation to be given of the consequences which may or will arise from failing to act as a result of enforcement action.
- If there is a process of appeal against any enforcement action the mechanism for this to be specified.

5 **ENFORCEMENT CONSIDERATIONS**

The above provides a general framework for how the Environmental Protection Team will conduct its enforcement activity. The following provides guidance as to the factors which are considered in making the choice of enforcement action. The factors are not exhaustive and those which apply will depend on the particular circumstances of the case. The importance of each factor shall be considered in terms of the particular case in making an overall assessment.

5.1 **Statutory Duty and Council Policy**

Some areas of work undertaken by the Environmental Protection Team have a statutory duty to take formal enforcement action in given circumstances. This does not mean to say that all other avenues of informal action are excluded if the same end result can be achieved in an equitable way, but greater emphasis will be placed on taking formal action if there is a statutory obligation to do so, if the particular circumstances warrant such action.

Council policy and initiatives shall be taken into account in order to prioritise and target enforcement action. This may mean that a stronger enforcement line is taken than might otherwise be the case to bring attention to a particular problem or to act as a deterrent. Alternatively this may mean that in some areas of work, particularly in discretionary areas, action may be less stringent or in some instances may not be enforced at all.

5.2 Circumstances Relating to the Offence

To ensure that enforcement action is proportionate to the risk to public health, the environment or to people's enjoyment or rights the following factors shall be taken into consideration.

- The impact which the matter under investigation has, or is likely to have directly on people or the environment. The greater the impact the more urgent and stringent the resulting enforcement action will be.
- The duration and frequency of the matter will be considered, although this does not mean that something which is relatively infrequent or of short duration will receive less urgent attention. It may be appropriate to take urgent enforcement action, with little opportunity for discussion, if the impact on people or the environment is serious.
- The range of effect on people or the environment will be considered. The more wide-ranging the impact, the more urgent and stringent the enforcement action will generally be. Although this is not to say that enforcement action will not be equally urgent or stringent if those affected are few in number but the impact is serious.

5.3 Circumstances of the Offender

The term offender is taken here in its widest sense to include those who have not necessarily committed a criminal offence but are responsible for an act or omission which results in the impact on people or the environment. It is the aim of the Environmental Protection Team to encourage action through negotiation and discussion whenever this is appropriate. The attitude of offenders in their response to such an approach varies, and therefore this is an important consideration when determining the most appropriate choice of enforcement action to take. The following factors will be taken into account.

- Any malicious, blatant or reckless disregard for the consequences of the offender's actions.
- The foreseeability of the resulting effect from the offender's actions.
- The willingness and ability of the offender to resolve the problem of concern.
- The history of the offender.
- Any obstruction to an officer of the Local Authority in the performance of his or her duty.

Enforcement action will be taken against those who are responsible for the offence, and where a company is involved it will be usual practice to take action against the company. However, consideration will also be given to the role played by officers of the company, including directors, managers and the company secretary, in the commissioning of the offence and whether action should also be taken against those individuals.

5.4 Circumstances of the Victim

If people are being affected by the matter under investigation their circumstances will be considered when determining the most appropriate course of enforcement action to take in so far as the law will allow. The following factors will be considered.

- Whether the person's request to the Local Authority for intervention is motivated by malice, any form of discrimination, or to gain some financial or competitive advantage.
- The vulnerability of the person, for example as a result of their age or health status, including mental health.
- Notwithstanding the above, enforcement action with respect to statutory nuisance will be taken having regard to what would be considered to be the reasonable expectations of an average person in the circumstances which they face, and no regard shall be had to any particular sensitivity of an individual.

6 EVIDENTIAL TEST

Formal enforcement action will not be commenced or continued by the Environmental Protection Team unless satisfied that there is sufficient, admissible and reliable evidence to support the action in court. In determining whether to take formal enforcement action consideration will also be given to the defences and grounds of appeal which are open to challenge the action and the likelihood of a successful appeal or defence being raised.

Consideration will be given to the Crown Prosecution Service's Code for Crown Prosecutors in determining whether to prosecute an offender and Home Office Guidance on the issuing of formal cautions in Circular 18/1994.

7 **PRESUMPTIONS AS TO ENFORCEMENT ACTION**

Decisions as to enforcement actions are a matter of professional judgement and the Environmental Protection Team, through its officers, needs to exercise its discretion having regard to the circumstances of the case and the general principles outlined above. However, in order to promote consistency, the following presumptions as to enforcement actions should be made.

7.1 There is a presumption that prosecution proceedings will be instituted in the following cases.

- Emissions of dark or black smoke from bonfires and chimneys on industrial, trade or business premises.
- The depositing of waste on land other than at a licensed disposal site.
- Dog fouling on public open space, when the person responsible for the dog opts not to accept a fixed penalty notice or refuses to pay a fine resulting from such a notice.
- Blatant disregard for the requirements of a legal notice.
- Repeated breach of legal requirements despite previous warning.
- Operation of a premises or process which requires a licence or authorisation despite previous warning.
- Breach of a licence or authorisation condition despite previous warning.
- The obstruction of an officer in the performance of his or her duty.

7.2 There is presumption that direct intervention will be taken by the Environmental Protection Team in the following cases.

- Action to silence audible intruder alarms if they are sounding, or are likely to sound repeatedly, or continuously and cause nuisance to people following a failure to comply with a legal notice requiring such action, and to recover the costs which are incurred.
- The seizure of sound amplification systems, and other equipment where appropriate, which are used to cause nuisance to other people and which is in blatant breach of a legal notice requiring nuisance not to be caused from such equipment.

- Action to obtain a Court Order to remove from Council owned land, and from other land where the owner is unknown or cannot be found following reasonable enquiries, the vehicles and possessions of those who encamp on such land unlawfully and where there is no humanitarian reason for being on the land.
- Works to repair or remove an obstruction from a drainage system following a failure to comply with a legal notice requiring such action, and to recover the costs which are incurred.
- Action to cleanse or treat premises which are in a filthy or verminous condition following a failure to comply with a legal notice requiring such action, and to recover the costs which are incurred.
- Action to ensure drinking water from a private supply does not pose a risk to human health following a failure to comply with a legal notice requiring such action, and to recover the costs which are incurred.
- Action to remove stray dogs from streets, where the owner could not be found after reasonable enquiries, and to impound such dogs in kennels, where they would become the property of the kennel owner if not recovered by the dog owner within 7 days, who would be liable for the payment of the kenneling fees which had been incurred.

APPENDIX B

FOOD SAFETY

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- 2 Enforcement Options
- 3 No Action
- 4 Informal Action
- 5 Statutory Notices
- 6 Detention and Seizure of Food Notices
- 7 PACE Code B Notices
- 8 Warrant to Enter Premises
- 9 Instigate Legal Proceedings

1 **INTRODUCTION**

1.1 Statement of Objectives

It is the City of Wakefield Metropolitan District Council's policy to strive to minimise the risk to the health and safety of people within the City of Wakefield Metropolitan District associated with the consumption of food and drink.

1.2 Determination of Enforcement Policy

All types of enforcement action will be based upon an assessment of the risk to public health due to non-compliance with Food Safety legislation. Any enforcement action chosen by an inspector will be by a policy that considers consistency, proportionality, fairness and is transparent.

1.3 Local Authorities Coordinating Body on Food and Trading Standards (LACOTS)

The Council resolve to comply with all Codes of Practice issued under Section 40 of the Food Safety Act 1990 and to support the guidance on enforcement matters issued by LACOTS and the Food Standards Agency. The procedures followed will aim to be in line with those of the West Yorkshire Food Liaison Group.

1.4 Authorised Officers

All authorised officers of the Council will abide by this enforcement policy when carrying out their enforcement duties and shall receive relevant training to enable them to do so. Only authorised officers with the relevant competence/experience will be able to issue/sign legal notices.

1.5 Review

This enforcement policy will be reviewed on an annual basis or more frequently in the light of new guidance issued by LACOTS or any other appropriate professional and governing body.

1.6 Quality Assurance

Quality Assurance procedures with respect to Food Safety Enforcement matters will be audited and reviewed on a regular basis.

1.7 Home Authority Principle

The Council endorses and will work within the guidelines of the Home Authority Principle and where enforcement action is taken will advise the Home Authority where necessary.

2 **ENFORCEMENT OPTIONS**

- 2.1 Enforcement actions need to be proportionate, fair, consistent, transparent and relate to common standards that ensure the public is adequately protected. Any decision to prosecute/formal caution will be taken by the relevant authorised officer in conjunction with the Principal Environmental Health Officer.
- 2.2 The Council is committed to achieving and maintaining consistency in its approach to enforcement action between authorised officers and also between Local Authorities.
- 2.3 The adherence to Codes of Practice issued by the Department of Health, LACOTS and Food Standards Agency advice and guidance issued by the West Yorkshire Food Liaison Group plus reference to relevant industry guides is important in achieving this goal.
- 2.4 Clearly the decision on which enforcement option is chosen will involve the consideration of a number of criteria eg

- The seriousness of the offence
- The proprietors previous history
- Confidence in the management
- Home or Originating Authority report
- Availability of due diligence defence
- The consequence of non - compliance
- The likely effectiveness of the various enforcement options

An authorised officer should not take enforcement action that is disproportionate to the risk to public health arising from any contravention identified and reference to any relevant industry guide should be considered.

2.5 The Options are;

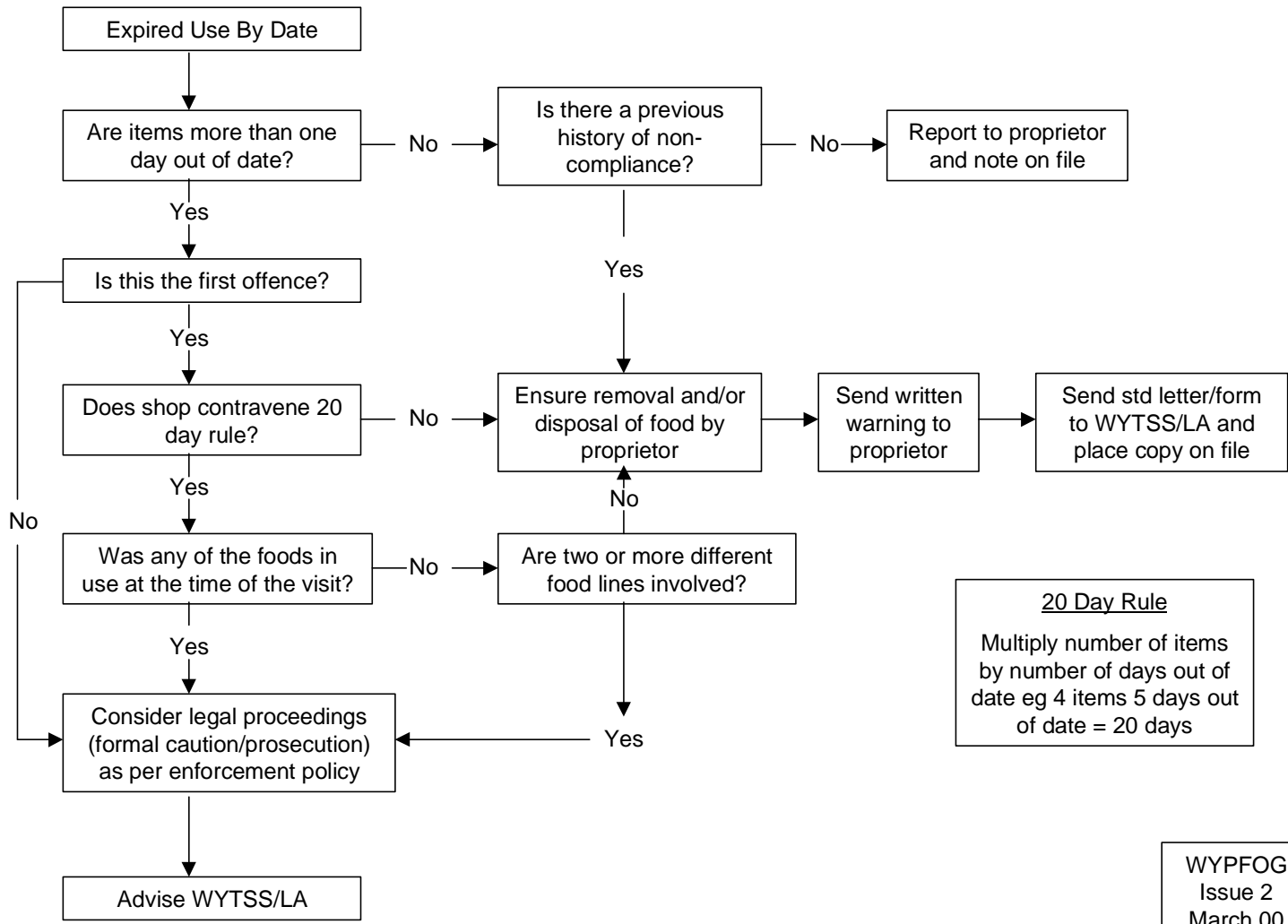
Take no action
Take informal action
Use statutory notices
Instigate legal proceedings/use formal cautions
Prohibition

2.6 Licenced Butchers

Enforcement action will be taken with respect to butchers premises which fall under the scope of the butchers licensing provisions but are operating without a licence as outlined in the Departmental Procedure on Butchers Licensing.

2.7 Food Sold Beyond its Use-by Date

Specific enforcement procedures will be followed where officers discover that food has been exposed for sale beyond its 'use-by date'. These procedures are outlined in an agreed West Yorkshire Principal Food Officers Group Document issue 2 dated March 2000 (see below).



3 **NO ACTION**

There will be times when it is appropriate to take no action, this will be where the risk to health is absent or insignificant.

4 **INFORMAL ACTION**

This includes;

- Offering advice
- Verbal warnings
- Requests for action
- Letters and reports of visits generated at the time of inspection

The need to differentiate between legal requirements and recommendations at all times is essential and all advice should be confirmed in writing.

Code Of Practice No 5 states that authorised officers should use informal procedures as long as they believe that such procedures will secure compliance with the requirements of food hygiene regulations within a time scale that is reasonable in the given circumstances.

Informal action may be appropriate in the following circumstances

- (a) The act or omission is not serious enough to warrant formal action i.e. minor offence with no risk to public health.
- (b) The past history of the individual concerned/record of compliance indicates that informal action will achieve the required result.
- (c) The enforcing officer has a high level of confidence in the management.
- (d) The consequence of non - compliance will not pose a significant risk to public health.
- (e) There are special circumstances e.g. the business is operated by a voluntary organisation.

5 **STATUTORY NOTICES**

In certain circumstances the service of statutory notices is appropriate. There are a range of notices that can be used and Departmental procedures on Improvement Notices and Prohibition Procedures , Detentions and Seizure of Food and Warrants to enter premises and PACE Code B Notices should be referred to.

5.1 Improvement Notices

Code of Practice No 5 (Revised April 1994) gives detailed guidance on the factors which should determine the enforcement approach of authorised officers who must follow this advice. Only officers authorised to serve Improvement Notices ie those with sufficient training and experience may do so. Any other officer should seek advice and return to the premises with a suitably authorised officer.

When to Use Improvement Notices

Improvement notices may be appropriate in the following circumstances;

- (a) There are significant contraventions of legislation (but they do not pose immediate risk).
- (b) There is a lack of confidence in the proprietor to respond to an informal approach.
- (c) There is a history of non - compliance with informal action.

- (d) Standards are generally poor with little management awareness of statutory requirements.
- (e) The consequences of non-compliance could be potentially serious to public health.

The Improvement Notice Checklist should be completed when determining the service of an Improvement Notice. The officer will consider all reasonable written requests for an extension of time on the notice made within the existing timescale.

5.1.1 Action on Non-Compliance with an Improvement Notice

Failure to comply with an Improvement Notice must be referred to the Principal Environmental Health Officer who will discuss with the authorised officer the institution of legal proceedings in accordance with the Departmental Prosecution Policy.

5.2 Emergency Prohibition Notices

Code of Practice No 6 gives detailed guidance on Prohibition Procedures and must be followed by officers. There must be an "imminent risk to health " to warrant the issue of an EPN and the 'health risk condition A (process or treatment), B (construction of premises/equipment) or C (state or condition) must exist. The use of Emergency Prohibition Notices should be considered in the following circumstances:

- (a) The consequence of not taking immediate and decisive action to protect public health would be unacceptable.
- (b) An imminent risk of injury to health can be demonstrated. This might include evidence from relevant experts eg public analyst, PHLS etc.
- (c) The guidance criteria in COP No 6 are fulfilled and the Departmental EPN Checklist has been completed and a decision as to the health risk condition applying has been made. Only authorised officers charged with the permission to issue EPN 's may do so, ie those with a minimum of 2 years experience in food safety, any other authorised officer must ensure that a Senior Officer is contacted and visits the premises concerned immediately.

If the service of an Emergency Prohibition Notice is deemed to be appropriate, officers should follow the Departmental Procedural Document on Prohibition.

6 **DETENTION AND SEIZURE OF FOOD NOTICES**

Where officers have grounds for suspecting that food does not comply with the food safety requirements in Section 8 (2) of the Food Safety Act 1990 they may use powers to inspect, detain, seize and arrange for condemnation of food. The procedure will be in accordance with Code of Practice No 4 and the Departmental Policy on the Seizure and Detention of Food.

7 **PACE CODE B NOTICES**

These notices will be issued by the inspecting officer in circumstances where it is necessary to search a premises to investigate an alleged offence. These circumstances are subject to PACE codes of practice and guidance issued by LACOTS.

8 **WARRANT TO ENTER PREMISES**

The Council will apply to the Magistrates Court for a warrant to enter premises if

- necessary entry is required at an unreasonable time; and/or
- entry to a premises is refused; and/or
- entry is expected to be refused; and/or
- the premises are vacant and entry is required.

9 **INSTIGATE LEGAL PROCEEDINGS**

The following are circumstances which may warrant prosecution.

- a) the offence involves flagrant breaches of the law, such that public health, safety or well-being is put at risk;
- b) the offence involves a failure to correct an identified potential risk to food safety arising from the processing, cooking, handling and storage of food, having given the offender a reasonable opportunity to comply with the lawful requirements of an authorised officer;
- c) the offence involves a failure to comply in full or in part with the requirements of a statutory notice;
- d) there is a history of similar offences related to risk to the safety of food.

Once the officer is of the opinion that legal proceedings may be appropriate the case is considered in light of the following factors, which will determine whether or not legal proceedings are instigated:

a) The Seriousness of the Offence

- the risk to public health;
- the number of identifiable victims;
- failure to comply with a statutory notice served for a significant breach of legislation;
- disregard for the public health for financial reward.

b) The Previous History of the Proprietor or Company Concerned

- the offences follow a previous history of similar offences;
- failure to respond positively to past warnings;
- failure to comply with statutory notices.

c) The likelihood of the Defendant being able to Establish a Due Diligence Defence

- practical steps taken or due diligence defence available but there is doubt about its legal validity;
- practical steps taken but there is doubt that due diligence has been achieved;
- practical steps have been taken that are not totally effective, therefore due diligence has not been proved;
- no practical steps taken, therefore there is no possibility of proving due diligence.

d) The Ability of Witnesses and their Willingness to Co-operate

- witness would rather not be involved in prosecution but might be willing if encouraged;
- witness would require summons to attend;
- witness would be willing to attend court but may not be effective under cross-examination;
- witness would be willing to attend and will be effective.

e) The Willingness of the Proprietor or Company Concerned to Prevent a Recurrence of the Problem

- steps have been taken to prevent a recurrence and there is confidence that these will be effective;
- steps have been taken to prevent a recurrence but there are doubts that these will be effective;
- steps to prevent recurrence have been promised but confidence is low that the promises will be fulfilled;
- the proprietor is not willing to prevent a recurrence and there is no confidence that the proprietor is capable of preventing a recurrence.

f) The Public Benefit of a Prosecution and the Importance of the Case for:

- the likely penalty upon conviction;
- the offender's age and state of health;
- the offender's attitude to the offence;
- whether it might establish a legal precedent.

(In assessing the public benefit, the Council will have regard to the Code for Crown Prosecutors)

g) Any Explanation Offered by the Proprietor or Company

- explanation is satisfactory, factors appear to be beyond the control of defendant;
- explanation shows that prevention was possible but necessary steps had not been taken;
- explanation poor, blatant failure to control circumstances leading to offence;
- no explanation offered, willful disregard for public health.

The Departmental Prosecution policy will be referred to and the Prosecution and formal caution checklists completed.

9.1 Formal Caution

The Council will offer formal cautions as an alternative to prosecution in order to

- deal quickly and simply with less serious offences;
- to divert less serious offences away from the Courts; and
- to reduce the chances of repeat offences.

The Council will only make the offer of a formal caution where

- there is sufficient evidence of the offenders guilt for a realistic prospect of conviction;
- the offender admits the offence and
- the offender clearly understands the significance of a formal caution and gives informed consent of being cautioned.

Where a proprietor declines the offer of a formal caution legal proceedings will be instigated.

APPENDIX C

HEALTH AND SAFETY

CONTENTS

- 1 Introduction
- 2 Principles of Enforcement
- 3 Proportionality
- 4 Consistency
- 5 Transparency
- 6 Targeting
- 7 Prosecution
- 8 Prosecution of Individuals
- 9 Death at Work
- 10 Encouraging Action by the Courts

1 **INTRODUCTION**

- 1.1 The aim of the Health and Safety Commission are to protect the health, safety and welfare of employees and to safeguard others, principally the public, who may be exposed to risks from work activity. This statement sets out the general principles and approach which the Commission expects enforcing authorities to follow. It is written for enforcing authorities, who need to know the Commission's policy, and for anyone who has an interest in the enforcement of the Health and Safety at Work etc Act 1974 and relevant statutory provisions.
- 1.2 Enforcing authorities must seek to secure compliance with the law. Most of their dealings with those on whom the law places duties (employers, the self employed, employees and others) are informal – inspectors offer information, advice and support, both face to face and in writing. They may also use formal enforcement mechanisms, as set out in health and safety law, including improvement notices where a contravention needs to be remedied; prohibition notices where there is a risk of serious personal injury; withdrawal of approvals; variations of licences or conditions, or of exemptions; or ultimately prosecution. This statement applies to all dealings, formal or informal, between inspectors and duty holders – all contribute to securing compliance.
- 1.3 The Commission's view of enforcement derives from the philosophy set out in Lord Robens' report Safety and Health at Work (Cmnd 5034 1972). Lord Robens considered that there should be a quick and effective response to flagrant breaches of the law and a discriminating and efficient approach to other breaches.
- 1.4 Much of modern health and safety law is goal setting – setting out what must be achieved, but not how it must be done. Guidance on how to achieve the goals is often set out in Codes and there is also a wide variety of advisory material describing good practice. Neither Codes nor guidance material are in terms which necessarily fit every case. In considering whether good practice has been adopted, Inspectors will need to take relevant Codes and guidance into account, using sensible judgement about the extent of the risks and the effort that has been applied to counter them. More is said about these matters below.
- 1.5 Sometimes the law is prescriptive – spelling out in detail what must be done. For example, all mines must have more than one exit; contacts with live electrical wires must be avoided. Prescriptive law limits the discretion of the duty holder and the enforcer.

2 **PRINCIPLES OF ENFORCEMENT**

- 2.1 The enforcement of health and safety law should be informed by the principles of proportionality in applying the law and securing compliance; consistency of approach, targeting of enforcement action and transparency about how the regulator operates and what those regulated may expect.

3 **PROPORTIONALITY**

- 3.1 Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties (duty holders) expect that action taken by enforcing authorities to achieve compliance should be proportionate to any risks to health and safety and to the seriousness of any breach.
- 3.2 Some health and safety duties are specific and mandatory – others require action so far as practicable. In general, the concept of proportionality is built into the regulatory system through the principle of “So Far As Is Reasonably Practicable”. Deciding what is reasonably practicable to control risks involves the exercise of judgement by duty holders and discretion by enforcers. When duty holders and enforcers cannot reach agreement, final determinations on what is reasonably practicable in particular circumstances are made by the courts.
- 3.3 When the law requires that risks should be controlled so far as is reasonably practicable, enforcing authorities considering protective measures taken by duty holders should always take account of cost as well as the degree of risk. The authorities may legitimately expect that relevant good practice will be followed. Where relevant good practice in particular cases is not clearly established, health and safety law effectively requires duty holders to assess the significance of the risks (both their extent and likelihood) to determine what action needs to be taken. Some irreducible risks may be so serious that they cannot be permitted irrespective of the economic consequences. At the other extreme, some risks may be so trivial that it is not worth spending more to reduce them. In general, risk-reducing measures would be weighed against the associated costs. If there is a significant risk, the duty holder must take measures unless the cost of taking particular actions is clearly excessive compared with the benefit of the risk reduction.

4 **CONSISTENCY**

- 4.1 Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.
- 4.2 Duty holders managing similar risks expect consistency from enforcing authorities in the advice tendered; the use of enforcement notices, approvals etc; decisions on whether to prosecute; and in the response to accidents.
- 4.3 The Commission recognises that in practice consistency is not a simple matter. HSE Inspectors and local authority enforcing officers are faced with many variables: the level of hazard, the attitude and competence of management, the accident history may vary between companies which may otherwise appear similar. The decision on enforcement action is a matter of judgement and the enforcer must exercise discretion. All enforcing authorities should have arrangements in place to promote consistency in the exercise of discretion, including effective arrangements for liaison with other enforcing authorities.

5 **TRANSPARENCY**

- 5.1 Transparency means helping duty holders to understand what is expected of them and what they should expect from the enforcing authorities. It also means making clear to duty holders not only what they have to do but, where this is relevant, what they don't. That means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory.
- 5.2 This statement sets out the general policy framework within which enforcing authorities should operate. Duty holders need to know what to expect when an inspector calls and what rights of complaint are open to them. HSE's approach is set out in two publications, HSE Working with Employers, and HSE and You, produced in response to Citizen's Charter, and reflecting the principles of the Government's Code for enforcement agencies. The publications describe a complaints procedure in the case of administrative decisions, and appeals to an industrial tribunal in the case of statutory notices. The Commission has asked local authorities to adopt the principles of the Government's Code.

6 **TARGETING**

- 6.1 Targeting means making sure that inspection is targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled; and that action is focused on the duty holder who are responsible for the risk and who are best placed to control it – whether employers, manufacturers, suppliers, or others.
- 6.2 The Commission expects that enforcing authorities will have systems for prioritising visits according to the risks posed by a duty holder's operations; and that they will take account of hazards and the nature and extent of risks. Management competence is important, because a relatively low hazard site poorly managed can entail greater risk to its workforce or the public than a higher hazard site where risk-control measures are in place. These are, however, high hazard sites (eg nuclear installations, offshore installations, highly hazardous chemical plant or processes) which will receive regular visits so that enforcing authorities can be sure that remote risks continue to be effectively managed.
- 6.3 When formal enforcement action is necessary, the person responsible for creating a risk should be held to account for it. The duty holder may be the owner of the premises, or the supplier of the equipment, or the designer or client of the project, rather than the employer of the workers exposed to the risk. Where several duty holders share a responsibility, enforcing authorities should take action against those who can be regarded as primarily in breach.

7 **PROSECUTION**

- 7.1 Enforcing authorities must use discretion in deciding whether to initiate a prosecution. Other approaches to enforcement can often promote health and safety more effectively but, where the circumstance warrant it, prosecution without prior warning and recourse to alternative sanctions may be appropriate.

7.2 The Commission expects that enforcing authorities will consider prosecution when:

- (a) it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, especially where there would be a normal expectation that a prosecution would be taken or where through the conviction of offenders, others may be deterred from similar failures to comply with the law;
- (b) or there is judged to have been potential for considerable harm arising from breach;
- (c) or the gravity of the offence, taken together with the general record and approach of the offender warrants it, eg apparent reckless disregard for standards, repeated breaches, persistent poor standards;

The decision to prosecute must also take account of the criteria set down in the Code for Crown Prosecutors, and in Scotland by the Procurator Fiscal as published in the Crown Office and Procurator Fiscal Service's Annual Report 1993/93 eg evidence and public interest tests.

8 PROSECUTION OF INDIVIDUALS

8.1 Subject to the above, enforcing authorities should identify and prosecute or recommend prosecution of individuals, including company directors and managers, if they consider that a conviction is warranted and can be secured.

9 DEATH AT WORK

9.1 Where there has been a breach of the law leading to a work-related death, enforcing authorities need to consider whether the circumstances of the case might justify a charge of manslaughter (culpable homicide in Scotland). Enforcing authorities in England and Wales should liaise with the Police, Coroners and the CPS and if they find evidence suggesting manslaughter, pass it on to the Police or where appropriate the CPS. IF the Police or the CPS decide not to pursue a manslaughter case, the enforcing authorities should prosecute or recommend prosecution of a health and safety case if that is appropriate. In Scotland responsibility for investigating sudden or suspicious deaths rests with the Procurator Fiscal.

10 **ENCOURAGING ACTION BY THE COURTS**

- 10.1 Health and safety law gives the courts considerable scope to punish offenders and to deter others. Unlimited fines and in some cases imprisonment may be imposed by higher courts. The commission will continue to raise the courts' awareness of the gravity of health and safety offences and encourage them to make full use of their powers. A list of the sanctions presently available to the courts is attached to this statement.